

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

IN RE: THE FINANCIAL OVERSIGHT  
& MANAGEMENT BOARD FOR PUERTO  
RICO,

PROMESA  
TITLE III

as representative of  
THE COMMONWEALTH OF  
PUERTO RICO, et al.

17 BK 3283 (LTS)  
(Jointly Administered)

Debtors.

Motion Hearing  
May 16, 2019  
2:00 p.m.

Before:

HON. LAURA TAYLOR SWAIN,

District Judge

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CARL WEDOFF

1 (Case called)

2 THE COURT: Good afternoon and welcome, counsel,  
3 parties in interest, and members of the public and press here  
4 in New York as well as the telephonic participants and  
5 observers in San Juan.

6 We are here today for oral argument on the urgent  
7 joint motion of the Financial Oversight and Management Board  
8 and the Official Committee of Unsecured Creditors seeking  
9 approval of a stipulation concerning joint prosecution of  
10 certain causes of action of the Puerto Rico Highways and  
11 Transportation Authority and the Employees Retirement System.

12 I will, as usual, remind you that, consistent with  
13 Court and judicial conference policies and the orders that have  
14 been issued, there is to be no use of any electronic devices in  
15 the courtroom to communicate with any person, source or  
16 repository of information, nor to record any part of the  
17 proceeding. All devices must be turned off unless you are  
18 using them for stored information, and all audible signals,  
19 including vibration features, must also be turned off.

20 No recording or retransmission of the hearing is  
21 permitted by any person, whether they are in the courtroom or  
22 not, including but not limited to the parties or the press, and  
23 anyone observed or found to have otherwise been texting or  
24 emailing or communicating from a device from the courtroom  
25 during the court proceeding will be subject to sanctions,

1 including but not limited to confiscation of the device and  
2 denial of future requests to bring devices into the courtroom.

3 I will conclude my friendly greeting here by asking  
4 counsel to bear in mind that in order to ensure consistent  
5 sound quality across all of our locations and telephone lines,  
6 the only live microphone in the well is the microphone at the  
7 podium. When you need to speak, you will need to speak from  
8 the podium so that everyone will be able to hear you. Thank  
9 you for cooperating with all of these technical issues and  
10 rules.

11 I understand that Mr. Despins will be opening for us.  
12 You have been allotted 20 minutes in total but you are using 7  
13 for reply?

14 MR. DESPINS: That is correct, your Honor.

15 THE COURT: Thank you. Good afternoon.

16 MR. DESPINS: Good afternoon, your Honor. I looked at  
17 all these things for the committee. Your Honor, I think it  
18 makes sense for me to make some preliminary comments and  
19 address a few points briefly. I am sure you already have views  
20 on all of this, and therefore it is a better use of my time to  
21 answer questions or comments you may have. But let me start  
22 with a few background points.

23 First, this is practically the same stipulation as the  
24 Commonwealth stipulation. In fact, we marked the Commonwealth  
25 stipulation to show changes as an attachment to the motion at

1 docket 6867. Obviously, it deals with two other debtors, ERS  
2 and HTA, where the committee is the sole official committee in  
3 both of these cases.

4 In terms of the types of adversary proceedings, your  
5 Honor, there will be the same three types as with the  
6 Commonwealth. First, what we call the garden-variety type of  
7 avoidance actions, preferences, fraudulent transfers claims  
8 against vendors, except that they will be much less. There  
9 were hundreds in the Commonwealth case. In this case, although  
10 that number is not fixed -- it is still moving because there is  
11 due diligence that is ongoing -- it will be much less than  
12 that. It would be probably a dozen or so.

13 As I said, there is due diligence ongoing as to every  
14 claim to make sure that all the facts can be asserted against  
15 each defendant. That's the garden-variety type of claim, same  
16 thing as the Commonwealth.

17 The second category are the clawback actions. These  
18 are claims again similar to the Commonwealth. It is a  
19 different theory, but it is the same concept. You received  
20 payments of principal and interest on bonds that we believe are  
21 invalid. The Court has not ruled on that. But if the Court  
22 rules that they are invalid, we, the estates, want the money  
23 back that was paid on these bonds that are void. So it is not  
24 exactly the same theory, but it is the same concept as the  
25 Commonwealth.

1           Your Honor, the game plan would be to file a motion to  
2 stay all these proceedings so that we, first of all, save  
3 money, not incur unnecessary expenses, and not trouble the  
4 defendants until further progress has been made on the  
5 underlying merits, which is are these bonds void or not. There  
6 is no point in having all these summons served on all these  
7 people if at the end of the day your Honor is going to rule  
8 that, no, the bonds are perfectly valid.

9           The third category, same thing as the Commonwealth, is  
10 the lien avoidance type of claims that Proskauer is handling  
11 the same way they are handling them in the Commonwealth. I can  
12 describe those generally because I have not seen the complaint  
13 yet. It's still percolating. "Complaints" plural, to be more  
14 precise. But it applies to both debtors, to ERS and to HTA.

15           For example, in ERS, your Honor, you will recall that  
16 there was a motion to amend the complaint. You denied that  
17 recently. But there was an attachment which was the proposed  
18 new complaint. Essentially, it would be along those lines in  
19 the ERS case except that they would name the fiscal agent as  
20 well as the bondholders. In HTA it's the same situation.  
21 There would be a lien avoidance action against the fiscal agent  
22 and the bondholders that have asserted that they are secured  
23 based on section 544 and other similar sections.

24           That covers the universe. Although there are  
25 different defendants, different types of claims, they are

1 really generically the same.

2           What I would like to say, your Honor, before we get  
3 into any questions you may have is that the objectors here have  
4 no right to pre-notice, pre-approval of any kind if the board  
5 were suing them on its own. The only thing that is changing  
6 here is that the committee is being added as a co-plaintiff.  
7 But the objectors are absolutely protected against that if they  
8 think that it is inappropriate through paragraph 27 of the  
9 stipulation, which says every defendant can challenge exactly  
10 that. Therefore, we don't believe that the objectors should  
11 prevail.

12           I would also point out that Genesis, which is a member  
13 of the committee which has HTA claims, filed a joinder very  
14 recently, docket number 6934, a joinder to our original section  
15 926 procedure motion. You know from prior hearings that SEIU  
16 had already filed a joinder way back to that motion, docket  
17 number 6433.

18           Finally, your Honor, I would say that there are no  
19 interdebtor issues here. The interdebtor claims are covered by  
20 a tolling stipulation that your Honor entered, docket number  
21 6182, entered two weeks ago. Footnote 4 of the stipulation  
22 expressly says that none of these claims that are covered are  
23 interdebtor claims.

24           Your Honor, I could go on and talk about Aurelius and  
25 things like that, but I think by now you have a pretty firm



1 grasp of these issues. I would be happy to answer any  
2 questions or comments you may have.

3 THE COURT: At this point I just have a couple of  
4 Aurelius-related questions for you. These are addressed to  
5 some extent in your papers, but I would like to be clear on the  
6 record.

7 What is the basis of your position that the joint  
8 plaintiff-joint trustee construct is still necessary for  
9 Aurelius reasons given that the president has issued the press  
10 release stating that he intends to nominate the current board  
11 and the First Circuit has allowed sufficient time to do that?

12 MR. DESPINS: The point, and we make this in our  
13 papers, is that we are in exactly the same position today as we  
14 were when the Commonwealth stipulation was approved in the  
15 sense that the stay of the mandate then was going to expire on  
16 May 15th and the statute of limitations on Commonwealth was  
17 going to expire on May 2nd or 3rd.

18 Therefore, the rationale was not that there was no  
19 stay or that we would run out of the stay before the expiration  
20 of the statute of limitations but rather it's the Aurelius  
21 theory -- not our theory, the Aurelius theory -- that the de  
22 facto officer defense cannot apply once you are on notice that  
23 you are no longer a de facto officer because you are acting  
24 illegally, and therefore any actions taken by the board post  
25 the decision by the First Circuit in February of this year are

1 void.

2 THE COURT: So, pending some regularization of the  
3 board from the appointments clause point of view or overturning  
4 of the First Circuit decision, the relevant dates that drive  
5 urgency here are February 15th as a potentially significant  
6 date given Aurelius's argument and the expiry of the statute of  
7 limitations, which is well before July 15th?

8 MR. DESPINS: Correct. The statute of limitations  
9 expires on Monday of next week. That's exactly the point.  
10 Let's be careful. Where the president said he intends to  
11 nominate, as far as we know there has been no such nomination  
12 process formally yet. In fact, we don't know the vagaries of  
13 the political process, meaning it has to go to the Senate. We  
14 don't know when that is going to happen and whether it will  
15 happen. I think if that process had been completed, we would  
16 be in a different position today. But that process cannot be  
17 completed we know for sure by next Monday.

18 THE COURT: What, to your knowledge, does the board  
19 foresee as a potential course of action if I were at the June  
20 omnibus to grant the motion to disband the committee as to ERS?

21 MR. DESPINS: I can't speak for the board. The first  
22 point I would make is that it is not because we would not be  
23 the committee in ERS, but we cannot be co-plaintiff in that  
24 case. There is no requirement that that be the case. In any  
25 event, we'll forcefully debate this and I think the U.S.

1 trustee will come in to object to that motion for obvious  
2 reasons.

3 The most obvious one is that we have claims ERS.  
4 Second, even if that were not the case, it is impossible in  
5 every case to have every debtor represented on the committee in  
6 the sense that there are dozens of cases where there are at  
7 least 50 debtors. There is no way that each and every debtor  
8 has a creditor on the committee.

9 Members of the committee act as a fiduciary for all  
10 debtors. That is hornbook law, and it is on that basis that  
11 the U.S. trustee appoints here. Whether there is one creditor  
12 or five or none on the committee that have claims against a  
13 particular debtor, the committee owes fiduciary duties to the  
14 unsecured creditors of that debtor.

15 I can't speak for the board, but I think there could  
16 be a substitution if required. But I'm not sure it would be  
17 required because, as I said, I don't think the committee would  
18 be in a worse position because of that. As opposed to what  
19 other committee? There is no other committee in the ERS case  
20 at this point other than this committee.

21 THE COURT: I think I hear you representing that the  
22 members of the committee and their counsel understand that even  
23 if the particular committee member is a Commonwealth creditor,  
24 not a creditor of another debtor instrumentality, that in  
25 acting for the other instrumentality the fiduciary duty of the

1 committee member and the committee as a whole is to act in the  
2 interest of that other particular instrumentality, and both you  
3 and the members of the committee understand that.

4 MR. DESPINS: Absolutely. For example, we have two  
5 creditors on the committee that have claims against PREPA, two  
6 out of seven. That's not a lot, but we spent hours, hours, on  
7 PREPA issues. You might say why are the other committee  
8 members not dropping off at that point? They are not dropping  
9 off because they know that that is part of their job to look  
10 after the PREPA unsecured creditors.

11 THE COURT: Thank you. That answered my questions.

12 MR. DESPINS: Thank you, your Honor.

13 THE COURT: Mr. Natbony, I have you down for the four  
14 minutes.

15 MR. NATBONY: Yes. Thank you, your Honor. Good  
16 afternoon. William Natbony from Cadwalader on behalf of  
17 assured. I would like to focus the brief time that I have on  
18 what differentiates this stipulation from the stipulation  
19 relating to the Commonwealth claims that your Honor addressed  
20 at the last omnibus.

21 First, when your Honor approved the Commonwealth  
22 stipulation, that was done after the parties were able to reach  
23 a limited agreement on a number of the objections. That  
24 agreement was applicable solely to that stipulation with no  
25 precedential value, as your Honor and both stipulations say.

1 That does not exist here today. Any attempt by Mr. Despins to  
2 argue that there is precedential impact or the same is  
3 inconsistent with the facts.

4 Second, when your Honor previously approved the  
5 Commonwealth stipulation, it did so because of the time-  
6 sensitive nature and also upon a representation that there were  
7 creditors at the time willing to engage in such process if need  
8 be. Much time has elapsed since that last representation, and  
9 we still have no creditor that has signed on to a motion for  
10 the trustee. We have Genesis. And each of those is joining  
11 only the procedural motion. There is no motion before your  
12 Honor that is made by any creditor.

13 It would be our position that the committee has had  
14 ample time and ample notice since the last omnibus at the very  
15 least when it made the representation and could have made those  
16 arrangements and did not.

17 THE COURT: That argument is specific to the  
18 requirements of section 926 of the code?

19 MR. NATBONY: That's correct, your Honor.

20 Third, the 926 argument is limited to actions  
21 specified in sections 544 to 549. We do have more information  
22 now. We still don't have schedules that have been presented to  
23 us, but we do know what kind of cases they are going to file.

24 We have heard Mr. Despins talk about lien avoidance  
25 actions. We know from the hundreds of cases that were filed

1 that many of them were adversary complaints that had  
2 declaratory relief relating to liens. We had other  
3 disallowances under section 502. Those are not part of the  
4 limited type of claims that 926(a) would allow.

5 Third, we have some serious concerns here that did not  
6 potentially exist with respect to the Commonwealth stipulation  
7 concerning conflict. While the UCC owes duties not only to the  
8 Commonwealth's unsecured creditors but also HTA's and ERS's  
9 unsecured creditors, it is great that we have a representation  
10 that says, oh, yes, we'll keep that in mind and we'll act  
11 appropriately.

12 But the bottom line is the UCC has already proven  
13 itself to take certain positions that are not in accordance  
14 with HTA's unsecured creditors. The rule 2019 statements first  
15 show that the Commonwealth creditors far outnumber the low HTA  
16 number, and the members have seen their claims paid down during  
17 this case. So there is an interest here, whether we want to  
18 admit it or not.

19 And the committee has supported the position of the  
20 Commonwealth on the clawback issue.

21 THE COURT: Mr. Natbony, this proposed stipulation is  
22 peculiar to and specific to actions against third parties, not  
23 interdebtor issues and actions against third parties concerning  
24 certain types of clawback issues. What is there in this record  
25 that would support a proper inference that the UCC would not be

1 able to prosecute faithfully these particular types of  
2 adversaries against third parties solely for the benefit of ERS  
3 on the one hand or HTA on the other?

4 I realize you have a bigger argument about the  
5 universe of issues that might arise and positions that have  
6 been taken in the past. But what we are talking about is a  
7 plaintiff against a third party for the benefit of a particular  
8 debtor. What is the irresolvable conflict there?

9 MR. NATBONY: To the extent you also heard him talk  
10 about lien avoidance actions or declaratory judgments, those  
11 may come into play. What he said was there wouldn't be  
12 necessarily interdebtor claims, but the issues may be there.

13 When the money comes in, where does it go? If it's  
14 money that is earmarked for HTA, is it going to stay in some  
15 secured account that is going to be only applicable to HTA  
16 unsecured creditors, or is that money going to be able to be  
17 siphoned off somehow to be used to pay Commonwealth claims when  
18 there is an interest for those Commonwealth unsecured creditors  
19 to have their claimed paid out as they have in the past?  
20 That's really the issue.

21 THE COURT: Mr. Despina can clarify this in his reply,  
22 but it would be my expectation that a lien avoidance complaint  
23 filed for HTA would seek the relief of return of money to HTA.  
24 There might be some follow-on litigation, there might be some  
25 separate litigation, and yes, there would be issues as to who

1 should be representing HTA, who should be representing the  
2 Commonwealth in sorting out competing claims of Commonwealth  
3 and HTA. But I'm not hearing that there is proposed to be a  
4 complaint filed that says avoid that lien and take the money  
5 out of HTA and put it somewhere else.

6 MR. NATBONY: I'll certainly look forward to  
7 clarification on reply. The answer is I haven't heard what  
8 your Honor is suggesting from Mr. Despins, nor have I heard  
9 that there aren't going to be situations where there will be a  
10 conflict of where the money goes.

11 You've got a situation where the unsecured creditors  
12 for the Commonwealth have clearly stated their position that  
13 the various moratorium laws to prevent the flow of revenues are  
14 not preempted by Promessa section 303. So we do have a  
15 position and several positions that the committee has taken  
16 that actually consider an actual conflict that exists. If Mr.  
17 Despins is going to get up and say, oh, we will not do this, we  
18 will not do that, we will listen to it, but there is a conflict  
19 there that really can't be avoided.

20 THE COURT: I have taken you well over your allotted  
21 time, so I will thank you.

22 MR. NATBONY: Thank you, your Honor.

23 THE COURT: Ms. DiBlasi.

24 MS. DiBLASI: Good afternoon, your Honor. Kelly  
25 DiBlasi, Weil Gotshal & Manges, on behalf of National.



1 National joins in the objecting parties' arguments and raises  
2 two additional points.

3 First, the movants' solution to this so-called  
4 Aurelius problem is not a solution at all. The Oversight Board  
5 and the Committee, as you discussed previously, contend that  
6 the stipulation is necessary in the event a court later  
7 determines that actions taken by the Oversight Board are void.  
8 But they inappropriately assume that this would apply only to  
9 the commencement of adversary proceedings.

10 What about the Oversight Board's decision to delegate  
11 authority to the Committee and name them as a co-plaintiff? In  
12 their hypothetical, that decision, that action, would be void  
13 as well. And there is no reason to stop there. The Court  
14 could rule that all actions of the Oversight Board are void,  
15 even dating prior to the First Circuit's decision, which would  
16 include the commencement of the Title III cases.

17 So, while the Oversight Board and the Committee are  
18 here today saying that these decisions, the decisions to  
19 commence litigation, are at risk, they are otherwise behaving  
20 as if every other decision and action by the Oversight Board  
21 will stand.

22 The Oversight Board is acting business as usual in  
23 these Title III cases, acting independently to negotiate deals,  
24 file pleadings, and prosecute the cases without a co-trustee  
25 and without a co-plaintiff. We submit that appointing the

1 Committee as a co-plaintiff and co-trustee here does nothing to  
2 resolve these issues. They are merely trying to solve one  
3 problem with another.

4 That leads to the second argument. If the proposed  
5 stipulation is not a solution, then we must question why we are  
6 here. Most telling are the last-minute new disclosures about  
7 which actions the stipulation covers. We heard for the first  
8 time in the reply after the monoline insurers' objection was  
9 filed that they were going to seek to avoid liens granted to  
10 the HTA bondholders. Today we are hearing for the first time  
11 that they are also going to seek to invalidate HTA bonds and  
12 clawback principal and interest payments.

13 Both the Committee and the Oversight Board are  
14 conflicted from representing the HTA in pursuing these matters.  
15 As you heard from counsel to Assured, there is a conflict. We  
16 do not believe that they are acting in order to return funds to  
17 HTA and make them available to HTA creditors. As noted, they  
18 supported the Commonwealth's clawback of HTA funds, and we  
19 believe that they will argue that if HTA's bondholders are  
20 stripped of their liens, they will have no right to try to  
21 pursue and challenge the clawback.

22 THE COURT: I'm going to ask you to wrap up because  
23 you are over your time.

24 MS. DiBLASI: Your Honor, we submit that the movants  
25 have manufactured a solution to a hypothetical problem that is

1 not a solution at all. They could have come to the monoline  
2 insureds to try to involve the issue, perhaps through a tolling  
3 of the statute of limitations. They did not. The stipulation  
4 should be denied.

5 THE COURT: Thank you.

6 Ms. Miller.

7 MS. MILLER: Good afternoon, your Honor. Atara Miller  
8 from Milbank.

9 THE COURT: I'm told it is hard to hear the speakers  
10 in Puerto Rico. Do your best.

11 MS. MILLER: I'll try to speak up.

12 THE COURT: Thank you.

13 MS. MILLER: I have already lost 13 seconds. I am  
14 going to try speak quickly here.

15 THE COURT: We'll give them back.

16 MS. MILLER: I want to make two points. The first one  
17 is with respect to your question specifically about what in the  
18 record here would indicate potential conflict. Particularly  
19 given the representations about the nature of the claims that  
20 would be co-represented and co-litigated, I want to make two  
21 points.

22 One is, although we haven't seen the schedule of the  
23 third-party vendors, I think we can expect that there is a very  
24 high likelihood that many, if not all, of those would be  
25 crossover vendors that supply either services or products both

1 to the Commonwealth as well as to HTA. There is no question in  
2 my mind that with respect to potentially resolving and settling  
3 those claims with crossover vendors, the Committee would favor  
4 the Commonwealth in any such settlement.

5 THE COURT: Try even closer and louder now. It's a  
6 phone problem. Sorry about that. We are doing something with  
7 the levels here.

8 MS. MILLER: I'll try. This sounds better.

9 The second point that I want to make is with respect  
10 to the clawback actions and the colloquy that you had with Mr.  
11 Natbony. I want to point out that when you think about  
12 clawback and lien avoidance, there isn't going to be a  
13 subsequent fight about who gets the money because their entire  
14 theory with respect to the lien avoidance is that the money is  
15 the Commonwealth's money and it never has to go down to the HTA  
16 box.

17 When you think about HTA having two major revenue  
18 streams, one is the toll revenues. That is a separate set of  
19 issues. But it also has all of the excise taxes, all of the  
20 vehicle fees, and all of the other fees that belong to HTA that  
21 the Commonwealth has for many years been holding.

22 I think the real answer and the real way, if the  
23 Oversight Board were concerned about the issues it purports to  
24 be concerned with, would be to have had the secured creditors  
25 acting as co-plaintiff here. Because of the unique structure

1 of this, I know that sounds absurd, but let me explain.

2 For the past many years the toll revenues have been  
3 diverted and used to cover operating expenses. As a result of  
4 that, all of those payments have come out of secured moneys and  
5 liened moneys of the bondholders. What happens is any dollar  
6 that goes in relieves the need -- which we think is illegal and  
7 will fight that out later -- relieves the need to rely on the  
8 toll revenues for operating expenses because you have more cash  
9 in the system. That allows toll revenues, which are collateral  
10 to the bondholders, to be released back to the bondholders.

11 We on behalf of AMBAC put a call in to Mr. Weisfelner  
12 to propose this before the proposed HTA stipulation was filed.  
13 We did not get a call back to discuss it. If the Oversight  
14 Board wants to prosecute these and thinks it is a real  
15 probable, it should be joined in with the secured creditors,  
16 not with the Committee that is inherently conflicted here.  
17 Thank you.

18 THE COURT: Thank you.

19 Mr. Sosland.

20 MR. SOSLAND: Your Honor, FGIC joins in the objection  
21 of the three immediately preceding speakers. I won't repeat  
22 what they said. I do want to address what Ms. Miller said and  
23 make a point on the conflict.

24 Your Honor asked what is in this record. This record  
25 is basically a motion, a stipulation, and objections. There is

1 nothing factual in the record other than the form of  
2 stipulation itself. As to the asserted conflict, there is a  
3 pleading. I do not know the adversary number that was assigned  
4 to this because it is one of the late-filed adversaries, but it  
5 is filed in the main case at docket number 6820. It's an  
6 adversary proceeding filed by the UCC and the special Committee  
7 or the Oversight Board against a number of parties beginning  
8 with Autonomy, 6820, in which, to Ms. Miller's point, the liens  
9 on various revenue streams that have been asserted by certain  
10 GO holders are sought to be avoided for the benefit of the  
11 Commonwealth.

12 From the agencies' perspective, each of those,  
13 specifically HTA here, is to be avoided for the benefit of the  
14 Commonwealth and its creditors, which does conflict directly  
15 with the interests of those of us who have secured claims  
16 against the HTA and who want to see those revenues remain  
17 within HTA. So there is evidence in the record, at least in a  
18 pleading, of which the Court can take notice of the precise  
19 conflict.

20 We also don't think there is any evidence in the  
21 record of why the Oversight Board benefits from the  
22 stipulation, and we don't think Mr. Despins' answer gives you  
23 that record. We ask that the motion be denied.

24 THE COURT: Thank you.

25 Messrs. Zouairabani and Mintz.

1 MR. MINTZ: Mintz thank you, your Honor. Good  
2 afternoon. Doug Mintz of Orrick for Cantor-Katz Collateral  
3 Monitor LLC, which serves as the collateral monitor for new  
4 bonds issued by the GDB Debt Recovery Authority, with our  
5 fellow counsel Nayuan Zouairabani, whose client is  
6 AmeriNational Community Services LLC, which is the servicer for  
7 the Debt Recovery Authority.

8 We are here on behalf of the Debt Recovery Authority,  
9 which has notes cited by the GDB. As you know, it was created  
10 by the GDB Title VI late last year. We have acceded to many of  
11 the GDB's assets, and that includes with respect to HTA more  
12 than a billion-7 in principal of HTA loans as well as  
13 \$200 million in principal of HTA bonds.

14 We share many of the concerns expressed today, as you  
15 saw in our pleadings, both legal and practical, and wanted to  
16 talk very briefly about one legal point. As you have seen and  
17 heard, section 926 requires that the debtors refuse to bring  
18 certain avoidance actions. That hasn't happened here. The  
19 legislative history talks about why that matters. This is  
20 discussed in the Off-Track Betting case that we cited in our  
21 brief.

22 The purpose of the refusal provision in section 926(a)  
23 is to permit a trustee to come in only when some political  
24 reason is keeping the debtor from proceeding. Congress talks  
25 about that in the legislative history. That is not the case

1 here. That is admittedly not the case here.

2 The concern is about the structural infirmities  
3 created by the Aurelius litigation. That is not what Congress  
4 had in mind by 926(a), by their own view. It seems we are  
5 trying to squeeze totally different concerns through the narrow  
6 hoop of 926(a). Those structural infirmities seem like an  
7 issue for Congress, not for us to decide here today.

8 THE COURT: The 926 arguments, including that specific  
9 argument, were made in connection with the Commonwealth  
10 stipulation, and I ruled on that in connection with the  
11 Commonwealth stipulation. It seems to me that is law of the  
12 case. What are you bringing forward that would warrant and  
13 meet the high standard for reconsideration of that decision?

14 MR. MINTZ: We were not a party to that, but I  
15 understand. I read all the prior discussions. I don't know  
16 that there are new issues, but I do believe that the  
17 appropriate standard under 926 is not met here.

18 Mr. Zouairabani.

19 MR. ZOURAIRABANI: Good afternoon, your Honor. Nayuan  
20 Zouairabani of McConnell Valdes presenting on behalf of  
21 AmeriNational Community Services LLC.

22 Your Honor, we are here for the second time in a row  
23 asking to be named as co-trustees under section 926 and to  
24 approve joint prosecution procedures. The request is modeled  
25 on the same situation as the Commonwealth Title III cases



1 admitted during argumentation today while exalting the virtues  
2 of that model and stating that that model should be adopted in  
3 the ERS and HTA cases.

4 The model is simply flawed, your Honor. Members of  
5 the Oversight Board have even recognized such, as highlighted  
6 in the Newsweek board that was referenced at docket 6910. The  
7 real effect of that model, your Honor, is as follows.

8 Movants began sending notices to myriad governmental  
9 suppliers, vendors, professionals, and other parties saying  
10 that they would be liable for millions of dollars in a  
11 complaint. The notice lacks specificity or any determination  
12 and calculation of potential exposure.

13 This created an aura of chaos and uncertainty on the  
14 island which finally resulted in 256 adversary proceedings  
15 being filed between April 30 and May 2, 2019. This model does  
16 not benefit the debtors whom the movants purport to represent,  
17 but it benefits themselves specifically in order to save face  
18 on a looming deadline that they knew from the beginning  
19 existed.

20 Movants might argue, so what, Aurelius actions are  
21 part and parcel of any bankruptcy case. To that I posit as  
22 follows. This is no ordinary bankruptcy case. We are talking  
23 about the largest municipal bankruptcy in the history of the  
24 United States. That means that you would expect a heightened  
25 level of diligence and care from an ordinary bankruptcy case,

1 specifically to a deadline that was known to all from the  
2 beginning.

3 In conclusion, your Honor, movants should bear the  
4 cost and the burden of their lack of diligence, not the parties  
5 in interest in the HTA and ERS cases and much less the citizens  
6 of Puerto Rico. Thank you.

7 THE COURT: Thank you.

8 Mr. Zakia.

9 MR. ZAKIA: Good afternoon, your Honor. Jason Zakia  
10 of White & Case on behalf of the Puerto Rico funds.

11 THE COURT: Louder, please.

12 MR. ZAKIA: Sorry. That is not normally a problem I  
13 have.

14 I won't repeat what has been said by counsel before.  
15 I would like to target a few issues that are unique to ERS.  
16 One is, as a threshold issue, following up on the colloquy your  
17 Honor just had, with regard to the 926 question of whether a  
18 creditor has asked for the appointment of a trustee, which I  
19 think everyone has acknowledged is a legal requirement.

20 In the Commonwealth case, Mr. Despins' answer was  
21 individual members of the Committee have joined and therefore  
22 that cured that defect. He doesn't have that argument with  
23 regard to ERS because there are no creditors of ERS on the  
24 Committee. That gets to the larger point I'm going to talk to  
25 you about in a moment.

1 I believe what you may hear is that the union, which  
2 is a Commonwealth creditor, may have members that made  
3 themselves be ERS creditors. But the union does not stand in  
4 the shoes of those members for purposes of determining whether  
5 it is a creditor.

6 So there is no ERS creditor making any request under  
7 926 for the appointment of a trustee here. And that is, with  
8 regard to ERS at least, we would submit fatal, and it is  
9 fundamentally different from the issues your Honor dealt with  
10 before in approving a similar stipulation with regard to the  
11 Commonwealth.

12 Second, and we are not going to try and argue the  
13 motion which is set for June, but because the Committee is  
14 seeking here co-standing with regard to ERS causes of action,  
15 we can't let that go by without pointing out, your Honor, that  
16 you are going to hear next month our motion to disband the  
17 Committee on the grounds that (1) there are no ERS creditors on  
18 this Committee and (2) there is a fundamental conflict similar  
19 to some of the HTA issues you heard about, a fundamental  
20 conflict between the interests of the debtor, the Commonwealth,  
21 and the debtor ERS.

22 As your Honor is probably more well aware than you  
23 would like to be because of all the litigation that has  
24 proceeded before you, there is a war really between these two  
25 debtors as to who owns the assets which we at least contend

1 belong to ERS. So, for the Committee to have any role in the  
2 ERS case when it is composed of no ERS creditors and almost  
3 entirely or overwhelmingly of Commonwealth creditors who have a  
4 direct financial interest that is antagonistic to the interests  
5 of ERS, we contend it is wholly inappropriate.

6 I will say this. It is beneficial that the  
7 stipulation carves out the interdebtor claims. If it hadn't,  
8 we would be even more vociferously objecting to having the  
9 Committee have any involvement in disputes between the two  
10 debtors.

11 But even if we ignore that and we just look at claims  
12 against third parties, what is the appropriate role of the  
13 unsecured creditors committee, which we would submit is the  
14 unsecured creditors committee of the Commonwealth, in  
15 prosecuting the ERS's cause of action? None.

16 Mr. Despins put his finger on this point when he  
17 answered your question of what happens if in June you agree  
18 with us and disband the Committee in the ERS case. I think his  
19 answer was it doesn't matter because there is no requirement  
20 that we have the Committee in the ERS case to be the  
21 co-plaintiff.

22 At that point, your Honor, what I was going to say is  
23 it is almost the same as picking random people out of the phone  
24 book. If they are not the Committee in the case and they are  
25 not creditors in the case, what interest do they have in being

1 trustee? I actually think my hypothetical is less severe. You  
2 would be better off with random names out of a phone book  
3 because at least those people don't have financial interests  
4 that are directly adverse to the interests of ERS.

5 We would submit that it is inappropriate for this  
6 Committee to have any role in prosecuting any causes of action  
7 of ERS or acting in any way as the Committee in the ERS case  
8 because they have no interests aligned with ERS and in fact  
9 their interests are directly opposite.

10 I think I finished directly on time. Unless your  
11 Honor has any questions, I'll stop.

12 THE COURT: Thank you.

13 MR. ZAKIA: Thank you.

14 THE COURT: Mr. Levin.

15 MR. LEVIN: Good afternoon, your Honor. Richard Levin  
16 for the Retiree Committee. First, I want to thank Mr. Zakia  
17 for supporting our position that the Retiree Committee should  
18 be appointed for ERS causes of action. I say that only partly  
19 tongue-in-cheek, but let me get to the substance of what I'm  
20 going to say.

21 First of all, like Mr. Zakia, I'm here only on the ERS  
22 issue, not on HTA. We do not oppose the appointment of a  
23 co-plaintiff, a co-trustee, to bring these causes of action.  
24 We just think it should be the Retiree Committee, which has a  
25 direct interest, rather than the UCC. We join Mr. Zakia's

1 arguments about the potential conflict with the UCC.

2 Ultimately, this is not so much a legal question as it  
3 is a question of what is the wisdom, what is wise to do here.

4 Let me make the following points.

5 First of all, the Retiree Committee constituents are  
6 the principal beneficiaries of any actions on behalf of ERS.  
7 They are the major creditors. Second, and to support that  
8 point, the Retiree Committee has filed a proof of claim in the  
9 ERS case. It is quite a substantial claim, \$58½ million.

10 THE COURT: It hasn't been appointed as the Committee  
11 in ERS, correct?

12 MR. LEVIN: That's correct. But it has filed a proof  
13 of claim. It might be a disputed claim, but disputed claim  
14 holders are creditors under the code, so it is a creditor. The  
15 UCC and its members are not creditors of ERS. So the Retiree  
16 Committee is better positioned for that reason.

17 There would be two bases to uphold this order when, as  
18 can be expected, the defendants in these actions challenge the  
19 appointment. One basis is section 926 and the other is the  
20 derivative standard issue. The 926 involves the appointment of  
21 a trustee. The Retiree Committee would qualify for both  
22 categories, either as a trustee to pursue these actions or for  
23 derivative standing, being a creditor in the ERS case, which  
24 the UCC would not be if the motion to remove the UCC in that  
25 case is granted in June.

1 THE COURT: I held in April in approving the  
2 Commonwealth stipulation that these co-plaintiff and co-trustee  
3 arrangements and derivative standing require the debtors'  
4 consent. I approved them as consensual arrangements. Has the  
5 Oversight Board consented to your proposed appointment?

6 MR. LEVIN: No, it has not, your Honor. But 926 does  
7 not require the debtors' consent. And the case law on  
8 derivative standing does not require the debtors' consent.

9 Finally, your Honor, let me make the point on the  
10 wisdom issue. The Retiree Committee has been involved in all  
11 of the earlier ERS litigation in this case up to this point;  
12 the UCC has not. The Retiree Committee has filed a claim  
13 objection against the bondholders already and is ready to go on  
14 all of the litigation that they are discussing.

15 On the point that Mr. Despins had made in his reply  
16 papers that they are up to speed and we are not, he stood at  
17 the lectern here and said, I've not seen the complaints, they  
18 are still percolating. We could get in as quickly as he could  
19 under those circumstances. Thank you, your Honor.

20 THE COURT: Thank you.

21 Mr. Friedman.

22 MR. FRIEDMAN: Your Honor, may I be heard as not an  
23 objection but for just one minute?

24 THE COURT: Yes, but louder.

25 MR. FRIEDMAN: Peter Friedman from O'Melveny & Myers

1 on behalf of AAFAF. One thing that was referenced in  
2 discussion and I wanted to bring to the Court's attention with  
3 respect to the suits being brought potentially in HTA, AAFAF  
4 and HTA in particular have been working with the special claims  
5 Committee to try to avoid some of the issues that were  
6 referenced by counsel for the trustee of the GDB recovery such  
7 that perhaps the suits that are brought may be less disruptive  
8 to operations, may be somewhat more refined, aren't necessarily  
9 pursuing parties that could constitute critical vendors or  
10 other disruptive acts to HTA.

11 There has been some reference, in the news and  
12 otherwise, to disruption given the 250-plus causes of action  
13 that were brought in the Commonwealth. We are trying to work  
14 with the special committee to avoid that happening here, which  
15 we think is quite important and would be beneficial for HTA as  
16 an operating entity as well as Puerto Rico. I wanted to  
17 mention we have been in consultation with the special committee  
18 on HTA causes of action.

19 Thank you, your Honor.

20 THE COURT: Thank you.

21 Mr. Despins, we are back to you.

22 MR. DESPINS: Briefly, your Honor. First, we can't  
23 lose sight of the fact that all of these people except for the  
24 Retiree Committee are defendants. They don't want any  
25 litigation to be brought. Their game plan is to try to confuse



1 things or to impede things as much as they can. By the way,  
2 none of them offer a solution other than AMBAC that says let's  
3 have the secured creditors be co-plaintiffs against secured  
4 creditors. That one I really didn't follow.

5 Your Honor, this issue of conflict, I think you got  
6 the point about there are no interdebtor issues. But more than  
7 that, the issue on the clawback, we have always, to my  
8 recollection from looking at our pleading, argued in the  
9 alternative, which is that if the Court is going to rule that  
10 the monolines are secured and they grab all the assets at HTA,  
11 then, in the alternative, we think the Commonwealth should get  
12 it. Therefore, there was no harm to our constituents. If the  
13 Court were going to rule that the monolines have secured claims  
14 on HTA, it's only then that the Court should consider our  
15 alternative argument.

16 In the event none of that can happen, and I want to  
17 clarify this, if we are suing a vendor for \$5 million and we  
18 get the \$5 million, first of all, the Committee has no say on  
19 how the \$5 million is going to be spent. I would love that.  
20 We have no say in that. It is the board through our plan that  
21 will decide where that money goes. We have no ability to say  
22 let's transfer all that money to the Commonwealth. Absolutely  
23 not. And I don't see how we could do that.

24 Also, National said something, and perhaps I wasn't  
25 clear. The validity of the bond challenge is with ERS, not

1 HTA. If I said the opposite before, I'm clarifying that.  
2 That's always been on the ERS side, not the HTA side, in terms  
3 of the underlying validity of those bonds. That removes one of  
4 the points.

5 The argument made by National was it's possible that  
6 the board's consent to the derivative standing could be  
7 challenged and therefore what's the answer to that? To do  
8 nothing? We know 926 is solid in the sense that the Court has  
9 found that it can be done.

10 Clearly, 99 percent of the causes of action that will  
11 be brought are 926 types of causes of action. So I don't think  
12 it makes sense to say that because there is some vulnerability  
13 on one point, we should do none of it. Of course, as a  
14 defendant, that's what I would like to do, but that shouldn't  
15 be what governs here.

16 I think I have covered AMBAC's points.

17 FGIC. The point about the fact that we are  
18 challenging Commonwealth alleged secured creditors' liens and  
19 that creates a conflict with HTA secured creditors I don't,  
20 frankly, understand. Some people are asserting that they are a  
21 secured creditor of the Commonwealth. We challenge that.  
22 That's one issue.

23 And now we are challenging the fact that some HTA  
24 secured creditors are saying that they are secured creditors of  
25 HTA. These are separate issues, and I don't know where the

1 conflict comes up.

2 THE COURT: I will ask this at the simplest, most  
3 naive level. You are not proposing to challenge bonds of one  
4 of these other creditors; you are challenging liens of HTA or  
5 ERS in a complaint that concludes with "and if there is no  
6 lien, therefore the money belongs to the Commonwealth"?

7 MR. DESPINS: Not in these complaints. It has been  
8 our position on the clawback that if the Court rules or is  
9 prepared to rule that they are secured in HTA, our position is  
10 that at that point we are allowed to argue, because the secured  
11 creditors of HTA would get nothing, that the Commonwealth  
12 defeats their interest because they are not a secured creditor  
13 of the Commonwealth. But not in these complaints. That's the  
14 short answer.

15 THE COURT: Not in these complaints?

16 MR. DESPINS: Absolutely not.

17 The point on ERS, your Honor, is that the employees  
18 that are subject to the collective bargaining agreement with  
19 SEIU, these are current employees. That is very important.  
20 The Retiree Committee represents retired employees. The  
21 committee represents active employees with respect to their  
22 retirement benefits.

23 There are tons of these people. These are janitors in  
24 schools and all that are represented by SEIU that have put  
25 millions of dollars of their own money pursuant to a law that

1 was adopted in 2000 where they were forced to fund their own  
2 pension. They put that money in ERS.

3 That money is gone. This is not the same thing as  
4 having an entitlement to a pension. This was their own money  
5 they were putting in. That money is gone. These employees are  
6 still employees because this happened in 2000. They haven't  
7 retired yet. They are current employees and they are  
8 represented by SEIU.

9 THE COURT: As to the argument that SEIU would not  
10 have standing to file a proof of claim for the individual  
11 underlying employee and therefore can't be a creditor in that  
12 sense for 926 purposes, your response is?

13 MR. DESPINS: It's exactly that. If you look at the  
14 Altair Airline case cited in our reply, it is the only circuit  
15 decision that addresses this. What happened there was people  
16 like monolines came in and said a union cannot be on the  
17 Committee, they are not a creditor. The Third Circuit said  
18 absolutely they can be on the Committee as a creditor. That is  
19 the only circuit decision that I know that has addressed the  
20 issue.

21 It is very important to point out the bar date order.  
22 Pension claims were exempted from filing, and therefore the  
23 fact that there was no claim filed at ERS is of no moment  
24 because these are pension claims. They are expressly excluded  
25 from the bar date, your Honor.

1 I would conclude with the Retiree Committee. That is  
2 the point you made. They lobbied heavily with the Oversight  
3 Board to replace the Committee, and that did not bear fruit. I  
4 don't know how it's possible for them to be substituted at this  
5 point given that the board does not desire that.

6 I think that addresses all the points, your Honor.

7 THE COURT: Thank you. We will take a five-minute  
8 break. Actually, we will take a ten-minute break. Let's  
9 everyone be back in their seats by 3:10 by the clock on the  
10 wall. Thank you.

11 (Recess)

12 THE COURT: I will now make my ruling as to the motion  
13 on the record.

14 Pending before the Court is the movants' urgent joint  
15 motion for entry of order approving stipulation and agreed  
16 order by and among the *Financial Oversight and Management*  
17 *Board, its Special Claims Committee, and Official Committee of*  
18 *Unsecured Creditors Related to Joint Prosecution of Certain*  
19 *causes of action of Puerto Rico Highways and Transportation*  
20 *Authority and Employees Retirement System of the Government of*  
21 *the Commonwealth of Puerto Rico.* (Docket entry number 6867 in  
22 case 17-3283). I will refer to this as "the motion."

23 The Court has considered carefully the motion and the  
24 terms of the proposed stipulation as well as the objections  
25 filed by several parties in interest and the arguments made in

1 court today. For the reasons that follow, the objections are  
2 overruled and the motion is granted.

3 At the April 24, 2019 omnibus hearing, the Court  
4 approved a similar stipulation with respect to the Commonwealth  
5 that is filed as docket entry number 6524, and the Court  
6 articulated its reasoning for doing so on the record.

7 In summary, the Court previously determined that it  
8 has the authority to approve the consensual grant of derivative  
9 standing. The Court further determined that the Oversight  
10 Board's decision to share its responsibility to pursue causes  
11 of action in light of the so-called Aurelius risk constitutes  
12 the necessary refusal for purposes of section 926(a) of the  
13 Bankruptcy Code.

14 The Court hereby adopts and incorporates by reference  
15 its earlier reasoning regarding consensual derivative standing  
16 and section 926 of the code as reflected in the transcript of  
17 the Court's oral opinion on the Commonwealth stipulation motion  
18 at the April 24, 2019 hearing.

19 The Court finds that movants have established that  
20 both necessity and debtor benefit support the grant of  
21 authority to the Unsecured Creditors Committee and members of  
22 the Oversight Board's Special Claims Committee to pursue causes  
23 of action for the benefit of HTA and ERS in accordance with the  
24 terms of the proposed stipulation.

25 The Court finds for substantially the reasons set

1 forth in the relevant portion of the movants' reply brief that  
2 SEIU has the requisite creditor status under section 926 of the  
3 code by virtue of its members' claims against ERS.

4 In the context of the HTA and ERS Title III cases, the  
5 relevant statutes of limitation expire on May 20, 2019,  
6 pursuant to bankruptcy code sections 108(a) and 546(a). The  
7 litigation contemplated by the stipulation must be commenced  
8 within the next few days.

9 Additionally, although the President of the United  
10 States has indicated that he intends to renominate the current  
11 members of the Oversight Board to continue serving in such  
12 capacities, he has not yet acted on his intention to do so, and  
13 the First Circuit's stay of its mandate is set to expire on  
14 July 15, 2019. Therefore, despite the arguments made by the  
15 objectors, the future status of the Oversight Board remains in  
16 question and the movants are still in a situation where the  
17 Oversight Board's authority to prosecute the actions may expire  
18 or be interrupted soon after the May 20, 2019 deadline.

19 In the face of such uncertainty, it would be imprudent  
20 for the Court to deny the requested relief. Accordingly, the  
21 Court finds that the framework contemplated by the proposed  
22 stipulation is both necessary and beneficial to HTA and ERS.

23 The Court is satisfied that the Committee is the  
24 proper party to be appointed as co-plaintiff and co-trustee in  
25 these cases at this juncture. It is the only official

1 committee that has been appointed in both the HTA and ERS  
2 cases.

3 Moreover, the Court finds the argument that there are  
4 relevant conflicts of interest on the part of the Committee  
5 unpersuasive. As made clear in the pleadings, the stipulation  
6 seeks to pursue claims against third parties, not interdebtor  
7 claims. Interdebtor claims are subject to the  
8 intergovernmental tolling stipulation approved by the Court on  
9 May 2, 2019, and filed at docket entry number 6812.

10 There is no factual basis in the record for the  
11 objectors' assertion that the Committee's role and positions  
12 taken as official committee in the Commonwealth case on the one  
13 hand and the HTA and ERS cases on the other impede the ability  
14 or willingness of the Committee to vigorously pursue claims  
15 against nondebtors on behalf of HTA and ERS to recover monies  
16 or protect rights of those debtors, that is, HTA and ERS.

17 The fact that a pending motion exists that challenges  
18 this authority of the Committee in the ERS case does not change  
19 this analysis. Unless and until the Court determines  
20 otherwise, the Committee is a valid statutory entity in both  
21 the ERS and HTA cases. Moreover, it is the only entity with  
22 which the Oversight Board has agreed to share its  
23 responsibility to pursue causes of action.

24 In the event the Court subsequently decides to disband  
25 the Committee in the ERS case and in light of the any other



1 actions affecting the Oversight Board's status that may have  
2 been taken by that time, the Oversight Board will need to  
3 evaluate the circumstances and determine whether it deems it  
4 necessary to seek to replace the Committee with another party  
5 plaintiff or request other relief from the Court to address the  
6 so-called Aurelius risk.

7 For the foregoing reasons, the objections are  
8 overruled and the motion is granted. Movants are directed to  
9 submit a Word version of the stipulation to Chambers. The  
10 Court will thereafter enter an appropriate order approving the  
11 stipulation.

12 This concludes our proceeding today. Is there  
13 anything else that we need to discuss together? I thank the  
14 Court staff in New York and Puerto Rico for their unfailing  
15 excellence and support. The next scheduled hearing is the June  
16 12th Omnibus Hearing in San Juan. We are adjourned. Keep well  
17 everyone.

18 (Adjourned)

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25

1 UNITED STATES DISTRICT COURT)  
2 ) ss.  
3 OF PUERTO RICO )  
4

5  
6 REPORTER'S CERTIFICATE

7 I, Thomas W. Murray, do hereby certify that the above  
8 and foregoing pages, consisting of the preceding 80 pages  
9 constitutes a true and accurate transcript of our stenographic  
10 notes and is a full, true, and complete transcript of the  
11 proceedings to the best of our ability.

12 Dated this 18th day of April, 2019.

13 S/Thomas W. Murray \_\_\_\_\_

14 Thomas W. Murray

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